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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,177	12/23/2003	Reinhold Rockel		7302

7590 07/08/2008  
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CANADA

EXAMINER
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RODDEN, JOSHUA E

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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07/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,177	<b>Applicant(s)</b> ROCKEL, REINHOLD	
	<b>Examiner</b> Joshua Rodden	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

### ***Claim Objections***

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 5 has been renumbered Claim 4 and misnumbered Claim 6 has been renumbered Claim 5.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites the limitation "bathtub outer rim" in Line 12. There is insufficient antecedent basis for this limitation in the claim. The applicant is not clear as to whether they are attempting to claim a "drying rack" or a combination of a "drying rack" and a "bathtub outer rim." For purposes of examination, the "bathtub outer rim" and references to such "bathtub outer rim" have not been considered to be limitations within any of the claims.

6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: Line 21 of Claim 1 contains the phrase "above that" which is indefinite in its description of the horizontal elevation of the bathtub outer rim.

7. Claim 5 recites the limitation "a lower shower door frame mounted on said bathtub rim" in Line 19. There is insufficient antecedent basis for this limitation in the claim. The applicant is not clear as to whether they are attempting to claim a "drying rack" or a combination of a "drying rack" and a "lower shower door frame mounted on a bathtub outer rim." For purposes of examination, the "a lower shower door frame mounted on said bathtub rim" has not been considered to be a limitation within claim 5.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**9. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,181,543 (Bentz).**

Regarding **Claims 1, 2 and 4, Bentz** teaches a moveable drying rack (80) capable of mounting onto the outer rim (77) of a bathtub, (Figure 15); wherein the rack comprises at least one elongate bar (81) positioned outwardly and over the bathtub rim (77) and retained substantially parallel at a horizontal elevation above a bathtub rim (77), (Figure 15); a pair of spaced arms (79) connected to both outward ends of the elongate bars (81), wherein the pair of spaced arms (79) include an inverted U-shaped rim (78) capable of engaging with the outer rim (77) of a bathtub, (Figure 15); an adjustable bathtub rim engaging portion (27) included in the lower portion of each arm (17) being positioned substantially perpendicular to a bathtub (18), (Figures 1-3); and the adjustable bathtub rim engaging portion (58) in the form of a threaded screw (Figure 9 and Column 3, Lines 52-62).

It should be understood that the phrase “adapted for” describes functional language and that the device need only be capable of performing the said function. It is implied that the terms “bathtub” and “bathtub rim” merely coincide with functional

language and are therefore not considered to be positive limitations within any of the claims. In regards to Claims 1 and 2, the drying rack of **Bentz** is certainly capable of mounting to the rim of a bathtub.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,181,543 (Bentz) in view of U.S. Patent No. 2,309,851 (Kuhne).**

Regarding **Claim 3**, **Bentz** teaches the limitations as discussed above but does not teach the adjustable bathtub rim engaging portion being a spring loaded lever. However, **Kuhne** teaches an inverted U-shaped section (14) mounted on the edge of a tub (16a) having a adjustable engaging portion (18) that is a spring (19) loaded lever, (Figures 1-4). Therefore, it would have been obvious to one of ordinary skill in the art to

modify **Bentz's** drying rack have the adjustable engaging portion be a spring loaded lever as taught by **Kuhne** for the purpose of efficiently attaching the device to the sides of tubs having varying layers of thickness.

**13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,181,543 (Bentz) in view of U.S. Patent No. 6,115,857 (Bidegain).**

Regarding **Claim 5 (Misnumbered as Claim 6)**, **Bentz** teaches the limitations as discussed above but does not teach the U-shaped section having a slotted relieve thereabove. However, **Bidegain** teaches a tub mounting device (14) having an inverted U-shaped section (24) that has a slotted relief (30) thereabove for the purpose of mounting to different shaped tub rims, (Figure 4). Therefore, it would have been obvious to one of ordinary skill in the art to modify **Bentz's** drying rack to have the inverted U-shaped section as taught by **Bidegain** for the purpose of attaching to the rims of various bathtub configurations.

The phrase "for accepting a lower shower door frame mounted on said bathtub rim" is considered functional language and is given no patentable weight.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents No. 1,367,290 (Williams), No. 2,045,815 (Wiesjahn), No. 2,174,650 (Bentz) and No. 3,389,408 (Pearson) all disclose similar style drying rack devices.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josh Rodden whose telephone number is (571) 270-5222. The examiner can normally be reached on M-Th 8am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joshua Rodden/  
Examiner, Art Unit 3637

/Lanna Mai/  
SPE of Art Unit 3637